IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5436 OF 1996

Devendra Pandurang Pandore)
Matruchaya Ozarwadi)
Taluka : Chiplun, Dist. Ratnagiri.).. Petitioner

Versus

1) The Chief Executive Officer)
Chiplun Municipal Council)
Chiplun, Dist.: Ratnagiri.)

2) Shri P.W.Bhuyar)
Presiding Officer, Labour Court)
Kolhapur.).. Respondents

Mr.S.M.Dharap for the Petitioner.

Mr.M.S.Topkar for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 9TH AUGUST 2004

ORAL JUDGMENT :

. By this Writ Petition, the Petitioner challenges the Award dated 28th February 1996 passed by the Presiding Officer, Labour Court, Kolhapur by which the Labour Court has held that the first Respondent Council has committed a breach of Section 25F and Section 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and that the termination of service effected from 1st January 1987 is illegal. However, the Labour Court has not granted the relief to the

Petitioner of reinstatement with continuity of service and full back wages. This relief has been denied by the Labour Court on the ground that the appointment of the Petitioner to the post of Sub-Overseer was against a reserved post. Relying on the judgment in *Chakradhar Paswan* vs. *State of Bihar and others*, **1988 I CLR 408**, the Labour Court rejected the Reference.

2. The facts in the present case are not in dispute. The Petitioner was appointed for a period of 30 days as a Sub-Overseer in the first Respondent Council from 1st January 1986. He was continued in employment as a Sub-Overseer by issuing fresh appointment letters from month to month upto 31st December 1986. On 1st January 1987, there was cessation of employment between the Petitioner and the first Respondent Council. It appears that on 1st April 1987, the Petitioner was given employment by the Council as a Clerk on a temporary basis. This employment was given on a monthly basis upto 30th June 1987 after which the Petitioner’s services were terminated. A dispute was raised by the Petitioner in February 1988 for reinstatement with continuity of service and back wages with effect from 1st January 1987. Reference was made for adjudication under Section 10 read with sub-section (1)(d) of the Act. By Award dated 28th February 1986, the Petitioner was denied the benefit of reinstatement

with continuity of service and full back wages.

3. Mr.Dharap, learned Advocate for the Petitioner, submits that the Award of the Labour Court is bad in law as the Labour Court having come to the conclusion that there was an illegality committed by the Respondent by terminating the Petitioner's services from 1st January 1987, ought to have granted reinstatement with continuity of service and full back wages. He submits that the Petitioner having completed 240 days was entitled to this benefit since the provisions of Sections 25F and 25G of the Act had not complied with. The learned Advocate submits that assuming that the Petitioner had not challenged the order of termination dated 20th June 1987, the Labour Court could well have considered whether the termination effected from 1st January 1987 could hold the field. He submits that the Labour Court atleast ought to have awarded back wages from 1st January 1987 to 31st March 1987 and then from 1st July 1987 onwards till 30th June 1994 when a candidate from the reserved category was available for the post of Sub-Overseer.

4. Mr.Topkar, learned Advocate for the first Respondent Council, submits that the Petitioner having been given employment with the first Respondent from 1st April 1987 to 30th June 1987, could not claim any

employment from the first Respondent on account of the termination of service from 1st January 1987. He relies on the judgment of this Court in the case of *Dattatraya Shankarrao Kharde and others* vs. *Executive Engineer, Chief Gate Erection Unit No.2, Nagpur and another*, **1994 I CLR 1022**, wherein the Division Bench of this Court has held in the facts and circumstances before it that the second termination having not been challenged by the workmen, no relief of reinstatement could be granted to them. He submits that when the workman was re-employed with the first Respondent Council on the post of Junior Clerk, it would have to be presumed that his employment continued upto the date of termination of service i.e. 30th June 1987 and it was that termination from service which ought to have been challenged by the Petitioner. He further submits that the Labour Court could not be faulted for holding that there was a violation of Sections 25F and 25G in view of the fact that the Petitioner had in fact completed 240 days in service and the seniority list was not put up as required. The learned Advocate then submits that assuming that to be so, at best the workman would be entitled to wages from 1st January 1987 till his employment has Junior Clerk on a temporary basis on 1st April 1987. He submits that the Labour Court has not committed any error in rejecting the Reference.

5. The submission made by Mr.Dharap needs to be accepted. There is no doubt that the Petitioner had completed 240 days in service. Obviously, therefore, he was entitled to permanency after completing 240 days. Instead of making the Petitioner permanent, the first Respondent Council terminated his services. The Council also did not comply with the provisions of law while terminating his service in violation of Sections 25F and 25G of the Act. Once the Labour Court comes to this conclusion, the Labour Court ought to have granted reinstatement with continuity of service and full back wages. Admittedly, the post of Sub-Overseer to which the Petitioner was appointed was a post for the reserved candidate. However, a suitable reserved category candidate was available for appointment only on 30th June 1994. Obviously, therefore, the Petitioner would be entitled to wages for the period from 1st January 1987 to 31st March 1987 and from 1st July 1987 to 30th June 1994. The Labour Court was in error in not granting any back wages to the Petitioner.

6. The judgment of the Division Bench of this Court cited by Mr.Topkar in the case of *Dattatra Shankarrao Kharde* (supra) deals with a case where the workmen were appointed for a specific period with the employer. On expiry of that period, the services of the workmen stood

terminated. It appears that they were re-appointed in the temporary post which was the same as the earlier appointment. For this reason, the Division Bench of this Court came to the conclusion that unless the second termination was challenged by the workmen, they were not entitled to be reinstated. This decision is based on the facts and circumstances in that case which indicate that the workmen concerned were given the second appointment in the same post.

7. Mr.Topkar submits that when an appointment is given during the pendency of a Reference or immediately after termination of service by another employer, the workman would be entitled to reinstatement but the back wages would have to be set off against emoluments of the workmen during the period he served with the earlier employer. He submits that in the present case the employment being with the same employer, it is the second termination of service which is required to be challenged by the Petitioner and not just the first termination.

8. This submission cannot be accepted. There is no distinction in the eyes of law for re-employment with the same employer during the pendency of the dispute or an employment given by another employer after the termination of service of a workman. Gainful employment

would necessarily mean with any body, person, company, firm, etc. The Council having chosen to give fresh appointment as a Junior Clerk to the workman for a period of three months after his first termination, cannot be absolved of the liability for the payment of back wages for the entire period from the date of termination on 1st January 1987 to the date on which the candidate from the reserved category was appointed. Furthermore, the Petitioner was required to do different work i.e. the work of Clerk whereas his initial appointment was to the post of Sub-Overseer. Therefore it could not be said that the Petitioner had been reinstated with continuity of service with the first Respondent Council. Obviously, therefore, the Petitioner would be entitled to the back wages upto 30th June 1994 when a suitable candidate was available from the reserved category, less the amount he earned during his gainful employment with the Council.

9. Writ Petition partly allowed. First Respondent Council shall pay to the Petitioner back wages with effect from 1st January 1987 to 30th March 1987 and 1st July 1987 to 30th June 1994 within eight weeks from today. However, there is no doubt that there is a delay of a period of two years in raising the demand. The Council would, therefore, be entitled to make a deduction in respect of the wages payable for this

period of two years from the back wages due.

10. Rule accordingly made partly absolute. No order as to costs.

11. Parties may be provided an authenticated copy of this order.